



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JANUARY 31, 2023

IN THE MATTER OF:

Appeal Board No. 626772

PRESENT: MARILYN P. O'MARA, MEMBER

The Department of Labor issued the initial determinations, ruling the claimant not entitled to a change in her benefit rate because the wages earned from the employer from April 1, 2021, through June 30, 2021, had been used to establish a prior claim and cannot be used to establish entitlement on a subsequent claim; ruling the claimant not entitled to a change in her benefit rate because her request to use Alternate Base Period wages was not submitted within a timely manner and cannot be considered; and ruling the claimant not entitled to a change in her benefit rate because the use of wages within her Alternate Base Period will not increase her current benefit rate because these wages are less than her Basic Base Period high quarter wages. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed November 9, 2022 (), the Administrative Law Judge, sustained the initial determination, ruling the claimant not entitled to a change in her benefit rate because the wages earned from the employer from April 1, 2021, through June 30, 2021, had been used to establish a prior claim and cannot be used to establish entitlement on a subsequent claim; overruled the initial determination, that her request to use the Alternate Base Period wages was not submitted within a timely manner; and sustained the initial determination, denying the use of wages within her Alternate Base Period because these wages were less than her Basic Base Period high quarter wages.

The claimant appealed the Judge's decision to the Appeal Board, insofar as it sustained the initial determination, denying the claimant the use of wages within her Alternate Base Period because these wages were less than her Basic Base Period high quarter wages.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant is employed as a tax preparer for the employer and has worked part-time, since March 29, 2019. The claimant has previously filed claims for unemployment insurance benefits in July 2020, and July 2021.

The claimant's claim for unemployment insurance benefits in July 2021 was calculated using the wages in her "Alternate Base Period" that ran from 3rd quarter 2020, through 2nd quarter 2021. The claimant had the following wages reported: 3rd quarter 2020: \$6,012.50; 4th quarter 2020: \$1,200.00; 1st quarter 2021: \$13,440.00; and 2nd quarter 2021: \$9,360.00, with total earnings of \$30,012.50 and high quarter earnings of \$13,440.00, thereby establishing a benefit rate of \$504.00. Her benefit year ended on July 24, 2022.

The claimant filed a new claim for unemployment insurance benefits effective July 25, 2022. Her "Basic Base Period" ran from 2nd quarter 2021, through 1st quarter 2022. She had earnings within the "Basic Base Period" as follows: 2nd quarter 2021: \$9,360.00; 3rd quarter 2021: \$2,880.00; 4th quarter 2021: \$8,880.00; and 1st quarter 2022: \$14,160.00, with total earnings of \$35,280.00 and high quarter earnings of \$14,160.00, thereby establishing a benefit rate of \$504.00.

The Department of Labor then issued a revised benefit determination, reducing the claimant's benefit rate to \$443.00, because the previous claim for unemployment insurance benefits had already included the 2nd quarter 2021 wages of \$9,360.00. Her revised benefit rate was now based upon the wages from solely the 3rd quarter 2021: \$2,880.00; 4th quarter 2021: \$8,880.00; and 1st quarter 2022: \$14,160.00, with high quarter wages of \$14,160.00 and total base period wages of \$25,920.00. The redetermination omitted 2nd quarter 2022 wages of \$9,360.00.

On or about August 3, 2022, the claimant telephoned the Department of Labor to notify the Department of Labor that the Department of Labor's record of earnings did not reflect the 2nd quarter 2022 wages of \$9,360.00. The claimant requested that these wages, within her "Alternate Base Period," be utilized to

raise her benefit rate.

OPINION: The credible evidence establishes that the claimant had earnings in the 2nd quarter of 2022 in the amount of \$9,360.00, as was confirmed by both the employer's paystubs and testimony. As a result of the additional 2nd quarter 2022 wages, we find that the total wages within the "Alternate Base Period" are now \$35,280.00, which exceeds the high calendar quarter wages of \$14,160.00. Hence, the claimant's total wages within the Alternate Base Period, due to wages in all four quarters in the Alternate Base Period, when recalculated to include the additional second quarter of 2022 wages, merit an increase to the claimant's benefit rate of \$443.00 to \$504.00 (or 1/26 of \$14,160.00). Accordingly, we conclude that the claimant is entitled to the use of the Alternate Base Period, which includes her 2nd quarter 2022 earnings of \$9,360.00, to establish a higher benefit rate, which results in an increase of over \$5.00 to her established benefit rate.

DECISION: The decision of the Administrative Law Judge, insofar as appealed from, is reversed.

The initial determination, denying the claimant the use of wages within her Alternate Base Period because these wages are less than her Basic Base Period high quarter wages, is overruled.

The claimant's weekly benefit rate for the claim filed effective July 25, 2022, based on the "Alternate Base Period" that includes the 2nd quarter 2022 wages of \$9,360.00, is increased to \$504.00.

The claimant is allowed benefits with respect to the issues decided herein.

MARILYN P. O'MARA, MEMBER